



UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/833,838 04/10/97 GAYNOR

B 96700/451

AMSTER ROTHSTEIN & EBENSTEIN
90 PARK AVENUE
NEW YORK NY 10016

HM12/1003

EXAMINER

EWOLDT, G

ART UNIT

PAPER NUMBER

1644

DATE MAILED:

17
10/03/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Advisory Action

Application No.

08/833,838

Applicant(s)

Gaynor et al.

Examiner

G. R. Ewoldt

Art Unit

1644

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

THE REPLY FILED Sep 7, 2001 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

Therefore, further action by the applicant is required to avoid the abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

THE PERIOD FOR REPLY [check only a) or b)]

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
- b) ☐ In view of the early submission of the proposed reply (within two months as set forth in MPEP § 706.07 (f)), the period for reply expires on the mailing date of this Advisory Action, OR continues to run from the mailing date of the final rejection, whichever is later. In no event, however, will the statutory period for the reply expire later than SIX MONTHS from the mailing date of the final rejection.

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on Jul 9, 2001. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will be entered upon the timely submission of a Notice of Appeal and Appeal Brief with requisite fees.
3. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search. (See NOTE below);
- (b) ☐ they raise the issue of new matter. (See NOTE below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE:

4. ☐ Applicant's reply has overcome the following rejection(s):

5. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claim(s).

6. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See attachment

7. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

8. ☒ For purposes of Appeal, the status of the claim(s) is as follows (see attached written explanation, if any):

Claim(s) allowed: none

Claim(s) objected to: 55-62

Claim(s) rejected: 54 and 63-74

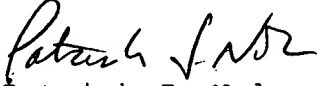
9. ☐ The proposed drawing correction filed on _____ a) ☐ has b) ☐ has not been approved by the Examiner.
10. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
11. ☐ Other:

DETAILED ACTION

1. As set forth in the Advisory Action, mailed 8/08/01, Applicant's declaration, filed 7/09/01, is insufficient to overcome the rejections in view of Spatz et al. While the declaration is sufficient to remove (i.e., Katz off) the authors of the Spatz et al. reference, said declaration is silent as to the contributions of Inventors Scharff and Valadon to the claimed invention. Attorney's arguments are insufficient to overcome this question. Applicant is advised that a properly executed declaration indicating the specific contributions of Inventors Scharff and Valadon to the instantly claimed invention, said contributions not disclosed in the Spatz et al. reference, would overcome these rejections.

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dr. Gerald Ewoldt whose telephone number is (703) 308-9805. The examiner can normally be reached Monday through Thursday and alternate Fridays from 7:30 am to 5:30 pm. A message may be left on the examiner's voice mail service. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan can be reached on (703) 308-3973. Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center 1600 receptionist whose telephone number is (703) 308-0196.

G.R. Ewoldt, Ph.D.
Patent Examiner
Technology Center 1600
September 30, 2001


Patrick J. Nolan, Ph.D.
Primary Examiner
Technology Center 1600